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TRANSCRIPT OF RECORD

G. W. Smith

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 227

LUCY WARD STEBBINS AND FRANK J. HURLEY, AS EXECUTRIX AND EXECUTOR OF THE WILL OF HENRIETTA PIERCE WATKINSON, DECEASED, PLAINTIFFS IN ERROR,

vs.

RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

FILED NOVEMBER 26, 1923

(29,973)

Immermann v State 10 H. M.

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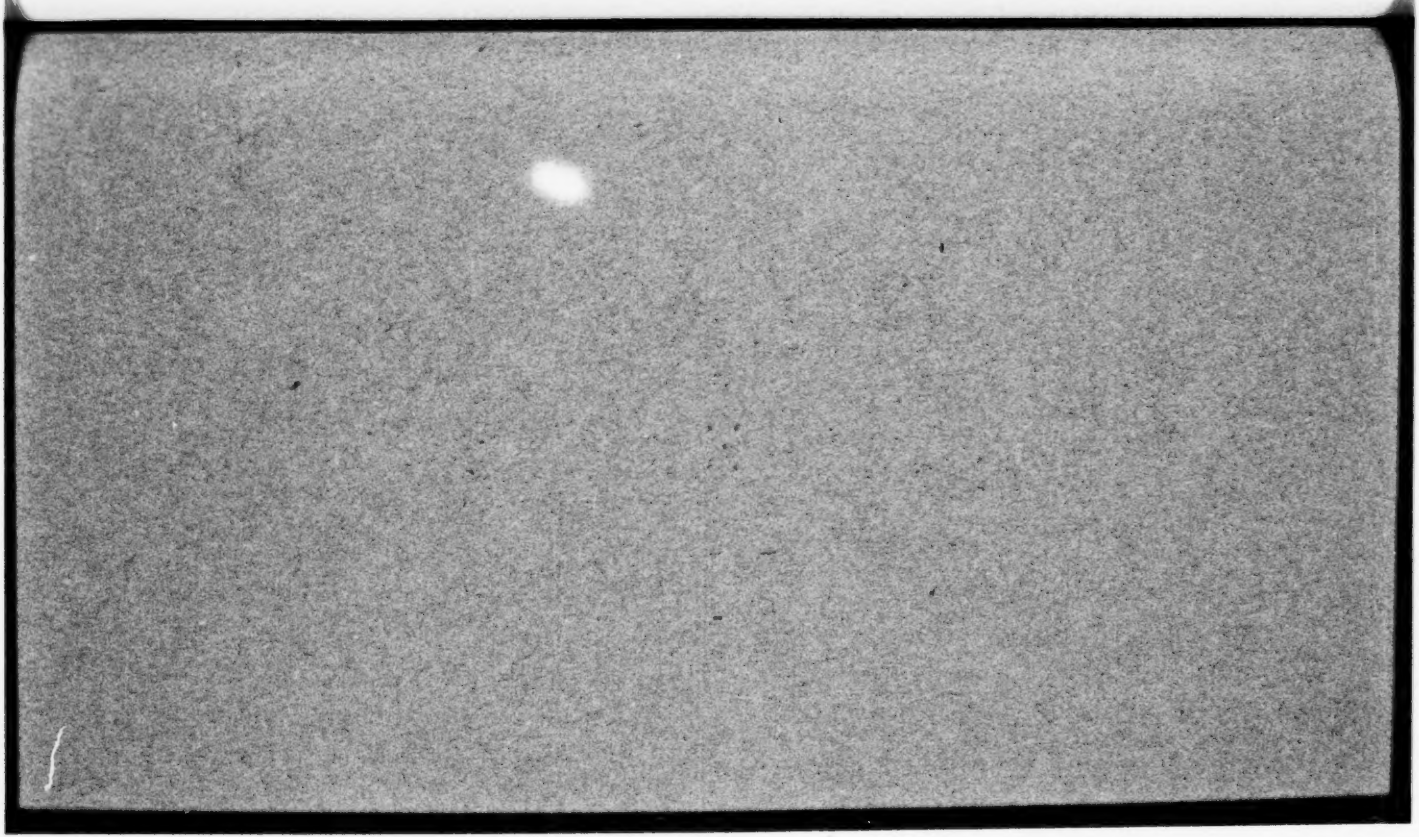

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[fol. 1] **IN SUPREME COURT OF CALIFORNIA**

CAPTION—Omitted

[fol. 2] In the Superior Court of the State of California in and for the City and County of San Francisco, Department No. 9. (Probate.)

No. 30075

In the Matter of the Estate of HENRIETTA PIERCE WATKINSON, Deceased

ORDER MODIFYING AND CONFIRMING REPORT OF INHERITANCE TAX APPRAISER—Filed April 29, 1921

William A. Breen, Esq., one of the duly appointed, qualified and acting inheritance tax appraisers of the City and County of San Francisco, State of California, and the inheritance tax appraiser heretofore duly designated and appointed in the matter of the above entitled estate, having on the 28th day of January, A. D. 1921, presented to this Court and filed herein his report as such appraiser;

And Lucy Ward Stebbins and Frank J. Hurley, the executrix and executor of the will of said deceased, having on the 18th day of March, A. D. 1921, and within due time, filed in this Court objections in writing to the said report; and this Court having thereupon duly made its order fixing the 4th day of April, A. D. 1921, at ten [fol. 3] o'clock A. M. of that day, and the courtroom of Department No. 9 (Probate) of this Court, as the time and place for the hearing of said objections;

And on this, the 25th day of April, A. D. 1921, the said report and the said objections thereto, coming regularly on for hearing pursuant to continuances duly and regularly ordered and had from the said 4th day of April, A. D. 1921; Edward C. Harrison, Esq., appearing for the said executrix and executor, and A. W. Brouillet, Esq., appearing on behalf of the State Controller of the State of California and the County Treasurer of the City and County of San Francisco, and being heard in response to said objections;

And due proof having been made to the satisfaction of the Court that notice of such hearing had been given in all respects as required by law and the aforesaid order of this Court;

And the Court having heard and duly considered the evidence adduced upon the issues of fact raised by said objections and finding therefrom:

That said appraiser has included among the deductions made by him from the gross value of said estate, the item of Federal Income Tax for 1920, estimated up to the date of said decedent's death, at the sum of $950.00 only; whereas the same has been computed and [fol. 4] accurately fixed and determined at the sum of $47,409.53,

a difference of $46,459.53, to the extent of which difference the net valuation of said estate, as shown by said report, is excessive, and that the taxes, therefore, stated in said report, are excessive to the extent of $9,457.39, and should be reduced by that sum, and such reduction apportioned amongst the residuary devisees and legatees under said will, as is hereinafter ordered and specified in detail.

That said executix and executor have been required and compelled by the Collector of Internal Revenue for the United States Treasury Department, to pay from and out of said estate to the United States, as and for the Federal estate tax thereon, under and pursuant to the provisions of the Act of Congress known as "The Revenue Act of 1918," the sum of $128,730.08, neither the whole nor any part of which is deducted by said appraiser in arriving at the net value of said estate, subject to inheritance tax.

And this Court being of the opinion, and finding further, that said report should be modified by the reduction of the net valuation of said estate to the extent of said sum of $46,459.53 and the taxes thereby shown, reduced to the extent of said sum of $9,457.39, apportioned as hereinafter set forth and specified in detail; and that [fol. 5] the said report should be otherwise confirmed and said objections thereto overruled.

It is hereby ordered, adjudged and decreed that said report of said inheritance tax appraiser be and the same is hereby modified by the deduction from the clear market value of the estate as thereby shown, of the said sum of $46,459.53, and the consequent reduction of such clear market value to $1,756,695.47; and that the taxes thereby shown upon the interests hereinafter specified passing under said will, are corrected and reduced to the figures hereinafter specified as follows—that is to say:

Name, relationship to deceased, character and value of interest		Exemption and rates	Tax
Constance Heeley, stranger:		$500.00	
		24,500.00 at 5%..	$1,225.00
		25,000.00 " 10%..	2,500.00
Money.....	$25,000.00	50,000.00 " 15%..	7,500.00
1/7 Residue ...	162,335.78	87,335.78 " 20%..	17,467.16
	$187,335.78		$28,692.16
[fol. 6] Mrs. Venour Vincent, stranger:		$500.00	
		24,500.00 at 5%..	$1,225.00
		25,000.00 " 10%..	2,500.00
Money.....	$10,000.00	50,000.00 " 15%..	7,500.00
Watch	50.00	72,335.78 " 20%..	14,477.16
1/7 Residue ...	162,335.78		
	$172,385.78		$25,702.16

Name, relationship to deceased, character and value of interest		Exemption and rates	Tax
Miss Gladys Heeley, stranger:		$500.00	
		24,500.00 at 5% ..	$1,225.00
		25,000.00 " 10% ..	2,500.00
		50,000.00 " 15% ..	7,500.00
Money	$10,000.00	72,335.78 " 20% ..	14,467.16
1/7 Residue ...	162,335.78		
	$172,335.78		$25,692.16
William L. Cousins, stranger:		$500.00	
		24,500.00 at 5% ..	$1,225.00
		25,000.00 " 10% ..	2,500.00
		50,000.00 " 15% ..	7,500.00
		100,000.00 " 20% ..	20,000.00
596 shs. H. & W. Pierce Co. ...	$119,200.00	89,714.78 " 25% ..	22,428.70
100 shs. Crown-Willamette Paper Co.	8,000.00		
Watch	15.00		$53,653.70
Chattels.....	164.00		
1/7 Residue ...	162,335.78		
	$289,714.78		
[fol. 7] William P. Johnson, cousin:		$1,000.00	
		24,000.00 at 4% ..	$960.00
		25,000.00 " 8% ..	2,000.00
		50,000.00 " 10% ..	5,000.00
		100,000.00 " 15% ..	15,000.00
596 shs. H. & W. Pierce Co. ...	$119,200.00	89,545.78 " 20% ..	17,909.16
100 shs. Crown-Willamette Paper Co.	8,000.00		
Watch chain ..	10.00		$40,869.16
1/7 Residue ...	162,335.78		
	$289,545.78		
Lucy Ward Stebbins, stranger:		$500.00	
		24,500.00 at 5% ..	$1,225.00
		25,000.00 " 10% ..	2,500.00
		50,000.00 " 15% ..	7,500.00
Money	$5,000.00	81,137.13 " 20% ..	16,227.43
Jewelry	8,502.55		
Furs	1,622.50		$27,452.43
Laces	175.00		
Silver, etc.	300.00		
Chattels.....	3,201.30		
1/7 Residue ...	162,335.78		
	$181,137.13		

Name, relationship to deceased, character and value of interest		Exemption and rates	Tax
[fol. 8] H. C. McNally, stranger:		$500.00	
		24,500.00 at 5% ..	$1,225.00
		25,000.00 " 10% ..	2,500.00
Money	$15,000.00	50,000.00 " 15% ..	7,500.00
100 shs. Crown-Willamette Paper Co.	8,000.00	13,419.20 " 20% ..	2,683.84
			$13,908.84
Automobile	5,000.00		
Ring	750.00		
Silver	300.00		
Chattels	3,201.30		
1/14 Residue ..	81,167.90		
	$113,419.20		
Frank J. Hurley:		$500.00	
Money	$5,000.00	24,500.00 at 5% ..	$1,225.00
Oakland land ..	9,000.00	25,090.00 " 10% ..	2,500.00
1/14 Residue ..	81,167.90	45,167.90 " 15% ..	6,775.19
	$95,167.90		$10,500.19

And that the total amount of inheritance taxes payable from said estate is the sum of $238,639.74 only.

And it is further ordered, adjudged and decreed that, as hereinbefore modified, the said report of said Inheritance Tax Appraiser be, and the same is hereby, confirmed and approved, and the inheritance taxes payable from said estate ascertained, determined and fixed as therein and thereby stated, excepting only as the same are [fol. 9] modified by the figures hereinbefore stated; and that the said objections to said report be, and they are hereby disallowed and overruled except so far as concerns the corrections hereby and hereinbefore made therein.

Done in Open Court this 25th day of April, A. D. 1921.

Frank H. Dunne, Judge.

Approved as to computations and form.
A. W. Brouillet, Asst. Inheritance Tax Attorney.

[File endorsement omitted.]

[fol. 10] IN SUPERIOR COURT OF SAN FRANCISCO COUNTY

Executors' Bill of Exceptions to Order Modifying and Confirming Report of Inheritance Tax Appraiser—Filed April 29, 1921

Be it remembered that William A. Breen, Esq., one of the duly appointed, qualified and acting inheritance tax appraisers of the City and County of San Francisco, State of California, and the inheritance tax appraiser duly designated and appointed by the above named Superior Court in the matter of the above entitled estate, presented to said Superior Court and filed herein, on the 28th day of January, A. D. 1921, his report as such appraiser, and that the following constitutes and is a copy of said report as so presented and filed:

[fol. 11] REPORT OF INHERITANCE TAX APPRAISER

Date of Death: August 7th, 1920.
Amount of Tax: $248,097.13.

To the Honorable the Superior Court of the State of California in and for the City and County of San Francisco:

William A. Breen, one of the duly appointed, qualified and acting inheritance tax appraisers for the City and County of San Francisco, State of California, and the inheritance tax appraiser in the above entitled estate, hereby reports to the Court, after due and regular hearing had and appraisement made, as follows:

That Henrietta Pierce Watkinson died testate on the 7th day of August, 1920, a resident of San Francisco, California, and left property taxable under the inheritance tax laws of the State of California in the above entitled proceedings; which property is more particularly described in the inventory and appraisement on file herein, which said inventory and appraisement is hereby referred to and made a part hereof.

[fol. 12] That at the date of death of said decedent the fair market value of the property of said estate was the sum of $1,807,627.40, as shown by said inventory and appraisement.

The following are the items of said property and the valuations thereof:

Cash in office	$161.21
Balance of deposit with the Bank of California National Association	5,601.13
Balance of deposit with Central National Bank of Oakland	163.91
Balance of deposit with Bank of Laidlaw & Co., New York	289,034.85
Balance of deposit with Shawmut National Bank, Boston, Mass.	188,595.91

Rents, interests and dividends collected since decedent's death	4,877.33
12 shares capital stock of Associated Oil Co., at	1,011.00
204 shares capital stock of the Bank of California National Association	39,780.00
200 shares capital stock of Central Savings Bank of Oakland	22,000.00
100 shares of the capital stock of Central National Bank of Oakland	20,000.00
1,547 shares of the capital stock of Crown Willamette Paper Company, Series A First Preferred	123,760.00
[fol. 13] 3,454 shares of the capital stock of Crown Willamette Paper Company, Series B First Preferred	259,050.00
1,228 shares of the capital stock of Crown Willamette Paper Company, Second Preferred	79,820.00
2,932 shares of the capital stock of The Golden Eagle Mining Company	No value
40 shares of the capital stock of Lebanon Paper Co.	No value
50 shares of the capital stock of Oakland Traction Company	150.00
1,277 shares of H. & W. Pierce, Incorporated	255,400.00
763 shares of the capital stock of Powell River Company, Ltd.	76,300.00
527 shares of the common capital stock of Willamette Pulp and Paper Company	13,175.00
2,590½ shares of the common capital stock, 2,590½ shares of the capital stock Series B First Preferred, and 2,590½ shares of the common capital stock of the Willamette Pulp and Paper Company.	79,787.40
[fol. 14] 26,000 shares of the capital stock of California Mother Lode Mining Company	No value
6,000 shares of the capital stock of San Marcos Mining Company	No Value

All that certain lot of land situated in the City and County of San Francisco, State of California, bounded and particularly described as follows, to-wit:

Beginning at a point in the southeasterly line of San Jose Avenue, distant thereon ninety-eight (98) feet and ten (10) inches southwesterly from the southwesterly line of Liebig Street; running thence southwestly along said southeasterly line of San Jose Avenue one hundred and thirty-seven (137) feet and seven and four-tenths (7.4) inches; thence at an angle of ninety degrees (90°) fifty-two and one-half (52½) minutes southeasterly one hundred and eighty-three (183) feet and nine (9) inches; thence southwesterly and parallel with said southeasterly line of San Jose Avenue one hundred and thirty-seven (137) feet and seven and four-tenths (7.4)

inches to a stake; thence at right angles southeasterly one hundred and seventy (170) feet to a [fol. 15] point in the northwesterly line of Wyoming Avenue; thence northeasterly along said northwesterly line of Wyoming Avenue two hundred and seventy-five (275) feet and one and four-tenths (1.4) inches; and thence at an angle of eighty-eight degrees (88°) northwesterly three hundred and sixty-seven (367) feet and six (6) inches to said southeasterly line of San Jose Avenue at the point of beginning, being lots Nos. Five (5), Six (6), Seven (7), Eight (8), Nine (9) and Ten (10) 3,000.00

The following described real property situated in the City of Oakland, State of California:

1. Beginning at the southwesterly corner of Twenty-eighth (formerly Merrimac Place) and Webster Streets, running thence southerly along the westerly line of Webster Street sixty-eight and one-half (68½) feet; thence at a right angle westerly one hundred and ninety-nine and six-tenths (199.6) feet; thence north sixty-eight and one-half (68½) feet to a point in the southerly line of Twenty-eighth Street distant thereon one hundred and ninety-eight and thirty-three hundredths (198.33) feet westerly from the point of beginning; and thence easterly [fol. 16] along said southerly line of Twenty-eighth Street one hundred and ninety-eight and thirty-three hundredths (198.33) feet to its intersection with said westerly line of Webster Street at the point of beginning 8,500.00

2. Beginning at a point on the westerly line of Webster Street, distant thereon sixty-eight and one-half (68½) feet southerly from the southerly line of Twenty-eighth Street formerly Merrimac Place); running thence southerly along said Westerly line of Webster Street seventy-six (76) feet; thence westerly and parallel with the said southerly line of Twenty-eighth Street one hundred and ninety-nine and fifteen hundredths (199.15) feet; thence northerly seventy-six feet to a point which is distant one hundred and ninety-eight and two-thirds (198 2/3) feet westerly from the point of beginning measured on a line parallel with said southerly line of Twenty-eighth Street; and thence easterly one hundred and ninety-eight and two-thirds (198 2/3) feet to said westerly line of Webster Street at the point of beginning; together with the improvements thereon 9,000.00

[fol. 17] All those certain lots of land situated in the said County of San Mateo, State of California, known, designated and particularly described and as the same are laid down and delineated and so designated upon the certain map entitled "Map of Mission Tract in San Mateo County, Cal.," which said map was filed for record on the 21st day of January, A. D. 1907, in the office of the County Recorder of said County of San Mateo, and is now of record therein in Book D of Maps at page 50, and also in Book 4 of Maps at page 51, to-wit:

1. Lots Numbered 40 and 41, in Block "A".....	500.00
2. Lots Numbered 45, 46, 61, 67, 68 and 73 in Block "C".....	1,500.00
3. Lot Numbered 27, in Block "D".....	250.00
4. Lot Numbered 60, in Block "C," subject to a contract under the terms of which the holder thereof will be entitled to a conveyance upon the payment of a balance of $225.00.....	225.00

All that certain tract or parcel of land situated in the County of San Mateo, State of California, bounded and described as follows, to-wit:

[fol. 18] Beginning at a point in the center of the County Roal leading from San Francisco to San Jose, which point is the southeasterly corner of the tract of land containing four hundred and thirteen and nine hundredths (413.09) acres, now or formerly belonging to W. T. Coleman; running thence south thirty and one-half (30½) degrees along the center of said road nineteen and thirty hundreths (19.30) chains to the northeasterly corner of a tract of land containing one thousand two hundred and sixty-nine and thirty-seven hundredths (1,269.37) acres, now or formerly belonging to Cabannes & DuPuy; thence leaving the said road and running along the line of Cabannes & DuPuy tract south fifty and one-half degrees (50½°) west fifty-three and ninety hundredths (53.90) chains; thence north forty-one and one-half degrees (41½°) west twenty-seven and seventy-three hundredths (27.73) chains to the said Coleman tract; and thence along the line of said Coleman tract north fifty-eight and three-fourths degrees (58¾°) east fifty-eight and seventy hundredths (58.70) chains to the point of beginning, [fol. 19] containing one hundred and thirty-one and eight-hundredths (131.08) acres and being a portion of Buri Buri Rancho..... 52,400.00

All those certain lots or parcels of land situated in the County of Solano, State of California, known, designated and particularly described as follows, as the same are laid down and delineated and so designated on that certain map entitled "Map of Tolenas Farms," filed in the office of the County Recorder of said County of Solano, State of California, on the 23rd day of July, A. D. 1912, and of record therein in Liber 4 of Maps, at page 29, to-wit:

1. Lots numbered 96, 97, 98 and 102..... 1,000.00
2. Lots numbered 1 and 2 subject to a contract of sale thereof under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 516.50
3. Lot numbered 3, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 115.80

[fol. 20] 4. Lots numbered 7, 8 and 9, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 593.00

5. Lot numbered 12, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 260.00
6. Lots numbered 14 and 15, subject to a contract of of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —,——, at 6% per annum..... 160.00
7. Lots numbered 22 and 23, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 95.00
8. Lot numbered 27, subject to a contract of sale thereof, under which the vendee and his assigns [fol. 21] will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 77.50
9. Lot numbered 34, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——— at 6% per annum..... 202.00

10. Lots numbered 55 and 56, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per cent annum..... 425.50

11. Lots numbered 60 and 61, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 397.50

12. Lot numbered 75, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, [fol. 22] at 6% per annum..... 323.50

13. Lot numbered 76, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum 100.50

All those certain lots or parcels situated in the said County of Solano, State of California, known, designated and particularly described as follows, as the same are laid down, delineated, numbered and so designated upon a certain map entitled "Map of Locke-Paddon Colony No. 5," filed for record in the office of the County Recorder of said Solano County on December 6th, 1912, and of record therein in Liber 4 of Maps at page 17, to-wit:

1. Loth numbered 11, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 28.93

[fol. 23] 2. Lot numbered 12, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 83.36

3. Lot numbered 13, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 88.36

4. Lot numbered 14, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 88.36

5. Lot numbered 17, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum..... 185.00

6. Lot numbered 20, subject to a contract of sale [fol. 24] thereof under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —,——, at 6% per annum..... 82.40

7. Lot numbered 21, subject to a contract of sale thereof under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum 18.60

All those certain lots or parcels of land situated in the County of Solano, State of California, known, designated and particularly described as follows, as the same are laid down, delineated, numbered and so designated upon a certain map entitled "Map of Locke-Paddon Colony No. 7," filed for record in the office of the County Recorder of said Solano County on February 15th, 1913, and of record therein in Liber 4 of Maps, at page 18, to-wit:

Lots 9, 10, 14, 15, 17, 18, 23 and 24, subject to a contract with William and Charles L. Paddon under [fol. 25] which they will be entitled to a conveyance thereof upon their payment of a balance of $1,600.00 1,600.00

All those certain lots or parcels of land situated in the County of San Joaquin, State of California, known, designated and particularly described as follows, as the said are laid down, delineated, numbered and so designated upon a certain map entitled "Map of Small Farms Improvement Tract Divisions H. J. K. L.," filed for record in the office of the County Recorder of said San Joaquin County on December 9th, 1912, and of record therein in Voume 6 of Official Maps and Plats at page 22, to-wit:

1. Lots numbered 25-26J, 27-28J, subject to a contract of sale thereof, under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, ——, at 6% per annum 333.10

2. Lots numbered 5-6K, subject to a contract of sale thereof under which the vendee and his assigns will be entitled to a conveyance thereof upon payment of a balance of $— with interest from —— —, [fol. 26] ——, at 6% per annum..... 158.55

All one equal undivided one-third part (1/3) of all those certain tracts or parcels of land situated in the County of Kern, State of California, bounded and particularly described as follows, to-wit:

First. The Southwest quarter (S. W. ¼) of the Southeast quarter (S. E. ¼), and the Southeast quarter (S. E. ¼) of the Southwest quarter (S. W. ¼) of Section Sixteen (16) in Township 31 South, Range 22 East, Mount Diablo Base and Meridian; containing 80 acres..... 1,000.00

Second. The South half (S. ½) of the South half (S. ½) of the Southwest quarter (S. W. ¼) of Section Sixteen (16), Township 29 South, Range 21 East, Mount Diablo Base and Meridian; containing 40 acres 300.00

Promissory notes and accounts receivable:

Note of J. D. Ackerman dated April 15th, 1917, for $430.31 payable 90 days after its date with interest at 8% per annum; secured by five shares of Oakland [fol. 27] Traction Co. stock preferred; upon which note nothing has been paid..... 15.00

Note of J. W. Bates dated August 1, 1918, for $2,912.85; payable on demand with interest at 5% per annum, upon which there has been paid on account of principal $18.71, and interest has been paid to March 1, 1920..... No value

Note of Crown Willamette Paper Company dated January 11, 1919, for $50,000, payable on demand with interest at 6% per annum, upon which the interest has been paid to August 1, 1920..... 50,000.00

Note of Myron T. Holcomb dated January 14, 1918, for $1,788.25, payable on demand with interest at 5% per annum, upon which nothing has been paid. No value

Note of E. J. Miley dated May 1, 1917, for $7,933.50, payable one year after its date with interest at 6% per annum, upon which $4,183.50 has been paid on account of principal and interest to October 15th, 1918, secured by 17,867 shares of the capital stock of State Consolidated Oil Company, evidenced by Certificate No. 1310 for 10,000 shares and Certificate No. 1311 for 7,867 shares..... 3,750.00

[fol. 28] Note of State Consolidated Oil Company dated July 1, 1914, for $80,000, payable in instalments with interest at 6% per annum, upon which $68,221.93 has been paid on the principal and the interest has been paid to January 1, 1918, secured by Deed of Trust made by the State Consolidated Oil Company to Savings Union Bank and Trust Com-

pany as trustee, conveying real property situated in the County of Kern, State of California and recorded on the 21st day of July, A. D. 1914, in the office of the County Recorder of said County of Kern, in Liber 293 of Trust Deeds at page 47.. 13,616.45

Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon, dated Feb. 1, 1918, for $4,095.00, payable three years after date with interest from Feb. 1, 1919, at rate of 6% per annum; upon which $1,475 has been paid on account of the principal and the interest has been paid to May 1, 1920, secured by Mortgage dated Feb. 1, 1918, and recorded Feb. 21, 1918, in Book B, Volume 134 of Mortgages at page 254, San Joaquin County Records..... 2,661.92

Note of William Locke Paddon, U. M. L. Paddon, [fol. 29] Charles Locke Paddon and Elvalynne D. Paddon dated February 1, 1918, for $900.00; payable three years after date with interest from February 1, 1919 at the rate of 6% per annum; upon which the interest has been paid to May 1, 1920, secured by Mortgage dated February 1, 1918, and recorded February 21, 1918, in Book B, Volume 134 of Mortgages at page 252 San Joaquin County Records..... 914.40

Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon dated Feb. 1, 1918, for $600.00, payable three years after date with interest from Feb. 1, 1919, at the rate of 6% per annum; upon which $420.00 has been paid on account of the principal and the interest has been paid to May 1, 1920, secured by Mortgage dated Feb. 1, 1918, and recorded February 21, 1918, in Book B, Volume 134 of Mortgages at page 264 San Joaquin County Records.... 182.88

Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon dated February 1, 1918, for $350.00 payable three years after date with interest from February 1, 1919, at the rate of 6% per annum; upon which the [fol. 30] interest has been paid to May 1, 1920, secured by Mortgage dated February 1, 1918, and recorded Feb. 21, 1918, in Book B, Volume 134 of Mortgages at page 257, San Joaquin County Records..... 356.60

Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon dated February 1, 1918, for $350.00 payable three years after date with interest from February 1, 1919, at the rate of 6% per annum; upon which the

interest has been paid to May 1, 1920, secured by Mortgage dated February 1, 1918, and recorded February 21, 1918, in Book B, Volume 134 of Mortgages, at page 259, San Joaquin County Records... 356.60

Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon dated February 1, 1918, for $175.00, payable three years after date with interest from February 1, 1919, at the rate of 6% per annum; upon which the interest has been paid to May 1, 1920, secured by Mortgage dated February 1, 1918, and recorded February 21, 1918, in Book B, Volume 134 of Mortgages, at page 255, San Joaquin County Records... 178.30

Note of William Locke Paddon, U. M. L. Paddon, [fol. 31] Charles Locke Paddon and Evalynne D. Paddon dated February 1, 1918, for $225.00, payable three years after date with interest from February 1, 1919, at the rate of 6% per annum; upon which the interest has been paid to May 1, 1920, secured by Mortgage dated February 1, 1918, recorded February 21, 1918, in Book B, Volume 134 of Mortgages, at page 262, San Joaquin County Records... 228.60

Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon dated February 1, 1918, for $225.00, payable three years after date with interest from February 1, 1919, at the rate of 6% per annum; upon which the interest has been paid to May 1, 1920, secured by Mortgage dated February 1, 1918, and recorded February 21, 1918, in Book B, Volume 134 of Mortgages, at page 247, San Joaquin County Records... 228.60

Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon dated February 1, 1918, for $171.51, payable three years after date with interest from February 1, 1919, at the rate of 6% per annum; upon which the interest has been paid to May 1, 1920, secured by [fol. 32] Mortgage dated February 1, 1918, recorded February 21, 1918, in Book B, Volume 134 of Mortgages, at page 245, San Joaquin County Records 174.25

Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon dated February 1, 1918, for $350.00, payable three years after date with interest from February 1, 1919, at the rate of 6% per annum; upon which the interest has been paid to August 1, 1920, secured by Mortgage dated February 1, 1918, recorded February 21, 1918, in Book B, Volume 134 of Mortgages, at page 266, San Joaquin County Records. 350.00

Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon dated February 1, 1918, for $175.00, payable three years after date with interest from February 1, 1919, at the rate of 6% per annum; upon which the interest has been paid to August 1, 1920, secured by Mortgage dated February 1, 1918, recorded February 21, 1918, in Book B, Volume 134 of Mortgages, at page 274, San Joaquin County Records...	175.00
Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon [fol. 33] dated February 1, 1918, for $225.00 payable three years after date with interest from February 1, 1919, at the rate of 6% per annum; upon which the interest has been paid to August 1, 1920, secured by Mortgage dated February 1, 1918, recorded February 21, 1918, in Book B, Volume 134 of Mortgages, at page 250, San Joaquin County Records	225.00
Note of William Locke Paddon, U. M. L. Paddon, Charles Locke Paddon and Evalynne D. Paddon dated February 1, 1918, for $135.00, payable three yars after date with interest from February 1, 1919, at the rate of 6% per annum; upon which the interest has been paid to August 1, 1920, secured by Mortgage dated February 1, 1918, and recorded February 21, 1918, in Book B, Volume 134 of Mortgages, at page 269, San Joaquin County Records..	135.00
Judgment against Wickham Havens and allowed claim against Estate of Frank C. Havens, deceased, upon which there remains due and unpaid a balance of $5,354.36 with interest thereon from July 23, 1920, at 7% per annum.....	2,500.00
[fol. 34] Liberty Bonds:	
Second 4's $4,000.00.....	3,430.55
Third 4¼'s $30,500.00	27,627.90
Fourth 4¼'s $28,000.00	24,196.65
Victory 4¾'s $30,000.00	28,962.59
Chattels:	
One equal half interest in live stock on Alamo and Blum Ranches in Contra Costa County, consisting of 8 head of horses and about 250 head of cattle...	5,080.00
Total	$1,807,627.40

Said inventory contained an item of $1,877.33, which was income accruing to the estate subsequent to the death of said deceased and is, therefore, not

taxable. Deducting said sum from the total appraised value of the estate leaves a fair market value of the Californian estate $1,802,750.07

The following personal property, situate in Maine and not brought into this State is nevertheless taxable here and was appraised by the official appraiser in Maine at the figures hereinafter set forth:

Cash	103.18	
[fol. 35] Jewelry in Safe Deposit Box 1383 of Portland Safe Deposit, Portland	15,238.00	
Jewelry in Safe Deposit Box 705 of Fidelity Trust Co., Portland	1,784.55	
2 Automobiles $5,000.00		
300.00		
	5,300.00	
Furniture, livestock, implements, etc., at Baldwin Farm	17,492.45	
		39,918.18

Adding said sum of $39,918.18 to the fair market value of the Californian estate makes a total market value of the property subject to inheritance tax of $1,842,668.25

Deductions should be made therefrom as follows:

Commissions	$10,500.00	
Counsel fees	10,500.00	
Debts (claims)	8,081.56	
Funeral expenses	1,080.00	
Expenses of Administration	6,525.68	
Taxes	1,876.01	
1920 Income Tax estimated up to the day of the death	950.00	
		39,513.25

The Clear Market Value of said Estate subject to tax is therefore $1,803,155.00

[fol. 36] That said property passed to the following named persons, whose relationship to decedent, the character and clear market value of whose respective interests at the time of the death of decedent and the inheritance or transfer tax due thereon, are as hereinafter shown:

Name, relationship to deceased, character and value of interest		Exemption and rates	Tax
Bessie Paxton, stranger.			
Money	$5,000.00	$500.00	
Ring	500.00	5,000.00 at 5% ..	$250.00
	$5,500.00		
John Paxton, stranger.			
Money	$5,000.00	$500.00	
		4,500.00 at 5% ..	$225.00
Roma P. Austin, stranger.			
Money	$5,000.00	$500.00	
Jewelry	1,500.00	6,000.00 at 5% ..	$300.00
	$6,500.00		
Roma Lawrence Austin, stranger.			
Money	$5,000.00	$500.00	
Jewelry	900.00	5,400.00 at 5% ..	$270.00
	$5,900.00		
Margaret L. Austin, stranger.			
Money	$5,000.00	$500.00	
Jewelry	425.00	4,925.00 at 5% ..	$246.25
	$5,425.00		
Wm. H. Bowers, stranger.			
Money	$5,000.00	$500.00	
		4,500.00 at 5% ..	$225.00
Cornelia Pringle, stranger.			
Money	$5,000.00	$500.00	
[fol. 37]		4,500.00 at 5% ..	$225.00
S. S. Cummins, stranger.			
Money	$5,000.00	$500.00	
		4,500.00 at 5% ..	$225.00
Mrs. Bronson Peck, stranger.			
Money	$1,000.00	$500.00	
		500.00 at 5% ..	$25.00

Name, relationship to deceased, character and value of interest		Exemption and rates	Tax
Mrs. Fannie Foss, stranger			
Money	$5,000.00	$500.00 4,500.00 at 5% ..	$225.00
Dr. William H. Flint, stranger.			
Money	$10,000.00	$500.00 9,500.00 at 5% ..	$475.00
J. S. Beecher, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5% ..	$225.00
Caroline Bowers Woodman, stranger.			
Money	$30,000.00		
Ring	750.00		
Pin	2,700.00		
Silverware, laces, furs..	2,097.50		
	$35,547.50	$500.00 24,500.00 at 5% .. 10,547.50 at 10% .	$1,225.00 1,054.75
			$2,279.75
Dr. Harry F. Hamilton, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5% ..	$225.00
Mrs. Florence Johnson, stranger.			
Money	$10,000.00		
20 shs. H. & W. Pierce Co.	4,000.00		
Pin	800.00		
	$14,800.00	$500.00 15,300.00 at 5% ..	$715.00
Mrs. F. C. Bates, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5% ..	$225.00
Olga de la Vaissiere, stranger.			
Money	$2,000.00	$500.00 1,500.00 at 5% ..	$75.00

[fol. 38]

Name, relationship to deceased, character and value of interest	Exemption and rates	Tax
William Pierce, cousin.		
Money $25.00	$1,000.00	No tax.
Lewis Pierce, cousin.		
Money $25.00	$1,000.00	No tax.
Ju Mon Sow, stranger.		
Money $1,000.00	$500.00	
Ju Wong, stranger.		
Money $1,000.00	500.00 at 5% ..	$25.00
	$500.00	
Yim Wong, stranger.	500.00 at 5% ..	25.00
Money $1,000.00	$500.00	
	500.00 at 5% ..	$25.00
Mrs. Harriet Lothrop, stranger.		
Money $10,000.00	$500.00	
	9,500.00 at 5% ..	$475.00
Wm. Pringle Houghton, stranger		
Money $5,000.00	$500.00	
	4,500.00 at 5% ..	$225.00
John Thayer Bates, stranger.		
Money $5,000.00	$500.00	
	4,500.00 at 5% ..	$225.00
Ida M. Smith, stranger.		
Money $2,000.00		
Pin 100.00		
$2,100.00	$500.00	
	1,600.00 at 5% ..	$80.00
Mrs. Adah Barclay, stranger		
Money $15,000.00	$500.00	
	14,500.00 at 5% ..	$725.00
Gordon Barclay, stranger.		
Money $5,000.00	$500.00	
	4,500.00 at 5% ..	$225.00

Name, relationship to deceased, character and value of interest		Exemption and rates	Tax
Nellie Watkinson, stranger.			
Money	$10,000.00	$500.00 9,500.00 at 5%..	$475.00
[fol. 39]			
William T. Smith, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5%..	$225.00
Miss Arline Towne, stranger.			
Money	$5,000.00		
Watch	20.00		
	$5,020.00	$500.00 4,520.00 at 5%..	$226.00
Lindsay Towne, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5%..	$225.00
William Towne, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5%..	$225.00
Josephine Towne, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5%..	$225.00
Miss Sophia Brownell, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5%..	$225.00
Harriet Brownell, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5%..	$225.00
William Brownell, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5%..	$225.00
John Morss, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5%..	$225.00
Martin Blote, stranger.			
Money	$2,000.00	$500.00 1,500.00 at 5%..	$75.00

Name, relationship to deceased, character and value of interest		Exemption and rates	Tax
Mrs. Sophia G. Pierce, stranger.			
20 shs. H. & W. Pierce Co.	$4,000.00	$500.00 3,500.00 at 5% ..	$175.00
Mrs. Sophia Brownell, cousin.			
10 shs. H. & W. Pierce Co.	$2,000.00	$1,000.00 1,000.00 at 4% ..	$40.00
[fol. 40] Mrs. Arline Towne, stranger.			
10 shs. H. & W. Pierce Co.	$2,000.00	$500.00 1,500.00 at 5% ..	$75.00
Mrs. Josephine Milton (nee Johnson), stranger.			
10 shs. H. & W. Pierce Co.	$2,000.00	$500.00 1,500.00 at 5% ..	$75.00
Ann P. Milton, stranger.			
Money	$10,000.00	$500.00 9,500.00 at 5% ..	$475.00
Elizabeth L. Austin, stranger.			
Money	$5,000.00	$500.00 4,500.00 at 5% ..	$225.00
8 cousins not mentioned in will,			
Money	$80.00	$1,000.00 each	No. tax.
Steep Falls Library,			
Books	$908.45		
Live Stock..	787.40		
Mirror, etc..	35.00		
	$1,730.85	$500.00 1,230.85 at 5% ..	$61.54

Name, relationship to deceased, character and value of interest		Exemption and rates	Tax
Constance Heeley, stranger.			
Money	$25,000.00		
1/7 Residue.	168,972.85		
	$193,972.85	$500.00	
		24,500.00 at 5%..	$1,225.00
		25,000.00 at 10%.	2,500.00
		50,000.00 at 15%.	7,500.00
		93,972.85 at 20%.	18,794.57
			$30,019.57
Mrs. Venour Vincent, stranger.			
Money	$10,000.00		
Watch	50.00		
1/7 Residue.	168,972.85		
	$179,022.85	$500.00	
		24,500.00 at 5%..	$1,225.00
		25,000.00 at 10%.	2,500.00
		50,000.00 at 15%.	7,500.00
		79,022.85 at 20%.	15,804.57
			$27,029.57
[fol. 41]			
Miss Gladys Heeley, stranger.			
Money	$10,000.00		
1/7 Residue	168,972.85		
	$178,972.85	$500.00	
		24,500.00 at 5%..	$1,225.00
		25,000.00 at 10%.	2,500.00
		50,000.00 at 15%.	7,500.00
		78,972.85 at 20%.	15,794.57
			$27,019.57
Wm. L. Cousins, stranger.			
596 shs. H. & W. Pierce Co.	$119,200.00		
100 shs. Crown Willamette Paper Co..	8,000.00		
Watch	15.00		
Chattels	164.00		
1/7 Residue.	168,972.85		
	$296,351.85	$500.00	

Name, relationship to deceased, character and value of interest		Exemption and rates	Tax
		24,500.00 at 5% ..	$1,225.00
		25,000.00 at 10% .	2,500.00
		50,000.00 at 15% .	7,500.00
		100,000.00 at 20% .	20,000.00
		96,351.85 at 25% .	24,087.96
			$55,312.96
Wm. P. Johnson, cousin.			
596 shs. H. & W. Pierce Co.	$119,200.00		
100 shs. Crown Willamette Paper Co..	8,000.00		
Watch Chain	10.00		
1/7 Residue.	168,972.85		
	$296,182.85	$1,000.00	
		24,000.00 at 4% ..	$960.00
		25,000.00 at 8% ..	2,000.00
		50,000.00 at 10% .	5,000.00
		100,000.00 at 15% .	15,000.00
		96,182.85 at 20% .	19,236.57
			$42,196.57
[fol. 42]			
Lucy Ward Stebbins, stranger.			
Money	$5,000.00		
Jewelry	8,502.55		
Furs	1,622.50		
Laces	175.00		
Silver, etc...	300.00		
Chattels	3,201.30		
1/7 Residue.	168,972.85		
	$187,774.20	$500.00	
		24,500.00 at 5% ..	1,225.00
		25,000.00 at 10% .	2,500.00
		50,000.00 at 15% .	7,500.00
		87,774.20 at 20% .	17,554.84
			$28,779.84

Name, relationship to deceased, character and value of interest		Exemption and rates	Tax
H. C. McNally, stranger.			
Money	$15,000.00		
100 shs. Crown Willamette Paper Co.	8,000.00		
Automobile .	5,000.00		
Ring	750.00		
Silver, etc...	300.00		
Chattels	3,201.30		
1/14 Residue	84,486.43		
	$116,737.73	$500.00	
		24,500.00 at 5%..	$1,225.00
		25,000.00 at 10%.	2,500.00
		50,000.00 at 15%.	7,500.00
		16,737.73 at 20%.	3,347.55
			$14,572.55
Frank J. Hurley, stranger.			
Money	$5,000.00		
Oakland land	9,000.00		
1/14 Residue	84,486.43		
	$98,486.43	$500.00	
		24,500.00 at 15%.	$1,225.00
		25,000.00 at 10%.	2,500.00
		48,486.43 at 15%.	7,272.96
			$10,997.96
		Total Tax—	$248,097.13

[fol. 43] Miss Lucy Ward Stebbins, Executor.
Frank J. Hurley, Executor.
Messrs. Edward C. Harrison and Maurice E. Harrison, Attorneys for Executrix and Executor, Mechanics' Institute Bldg., San Francisco, Cal.
Dated: January 20, 1921.
W. A. Breen, Inheritance Tax Appraiser.

That Lucy Ward Stebbins and Frank J. Hurley, the duly appointed, qualified and acting executrix and executor of the will of said Henrietta Pierce Watkinson, deceased, filed in said Superior Court, on the 18th day of March, A. D. 1921, and within due time, objections in writing to the said report of said inheritance tax appraiser, and that the following is a copy of said objections in writing, so filed as aforesaid:

[fol. 44] EXECUTORS' OBJECTIONS TO REPORT OF INHERITANCE TAX APPRAISER

Lucy Ward Stebbins and Frank J. Hurley, the executrix and executor of the Will of Henrietta Pierce Watkinson, deceased, object to the report heretofore filed herein by William A. Breen, Esq., as inheritance tax appraiser of the estate of said deceased; and as their grounds of such objection, show unto this Court and allege as follows:

1. That the said decedent in and by her said Will, creates and establishes a trust in certain property and names as the trustees thereof, Harry C. McNally and your petitioner, Lucy Ward Stebbins, and provides further for the payment to said trustees out of said estate, a compensation of five thousand dollars ($5,000) each for their services as such trustees; that the said sums so specified for said services would be and are the reasonable value of such services and constitute, as said executrix and executor are advised and believe, an expense of the proper execution of said Will and of the administration of said estate thereunder, which should be deducted from the value of said estate in arriving at the value of each distributive share [fol. 45] of the residue thereof for the purpose of fixing the inheritance taxes thereon; but that said appraiser has in his said report neglected and refused to make such deduction, with the result that by reason of such refusal to make such deduction, the said appraiser has, in his said report, placed upon said estate as the clear market value thereof a sum too large to the extent of the sum of $10,000, with a consequent excess in the taxes stated by him, amounting to the sum of $2,035.71.

2. That said appraiser has included among the deductions made by him from the gross value of the estate the item of Federal Income Tax for 1920, estimated up to the date of said decedent's death, at the sum of $950.00 only; whereas the same has since been computed and accurately fixed and determined at the sum of $47,409.53, which last named sum your petitioners have been required to pay, and have paid, to the Collector of United States Internal Revenue, as and for such item of income tax; that the failure on the part of said appraiser to deduct said last mentioned sum so paid from and out of said estate, in fixing his net valuation thereof, results in a further excess net valuation of said estate to the extent of the sum of $46,459.53, and a further excess to the extent of $9,457.84 in the amount of taxes stated in said report as payable from said estate.

3. That said executrix and executor have been required and com- [fol. 46] pelled by the Collector of Internal Revenue for the United States Treasury Department, to pay from and out of said estate, to the United States, as and for a Federal Estate Tax thereon, under and pursuant to the provisions of the Act of Congress known as "The Revenue Act of 1918," the sum of $128,730.08, neither the whole nor any part of which is deducted by said appraiser in arriving at the

net value of said estate, subject to inheritance tax; that the failure to deduct said last mentioned sum so paid from and out of said estate, results in a further excess net valuation of said estate to the extent of said sum of $128,730.08, and a further excess to the extent of $26,205.75 in the amount of taxes stated in said report as payable from said estate.

4. That the correction of said report by the deduction from the net value of said estate as thereby shown, subject to inheritance tax, of the items hereinbefore mentioned, would establish as the correct net value thereof the sum of $1,617,965.39 only, and that the difference between the taxes thereon as stated in said report, and the correct amount of taxes thereon, is and would be the sum of $37,699.30.

5. That the exaction of said inheritance tax to the extent of said sum of $37,699.30 would constitute, and constitutes, a taking for [fol. 47] public use without just or any compensation therefor, of the property of said estate and of the residuary legatees and devisees under said Will to the extent of said sum of $37,699.30 and would be, therefore, and is, a violation of the provisions of Section XIV of Article I of the Constitution of the State of California.

6. That to the extent that said report omits the deduction of said Federal Estate Tax amounting to $128,730.08, and imposes inheritance taxes thereon amounting to the sum of $26,205.75, the same constitutes and is a violation of the provisions of Section 1 of Article XIII of the Constitution of the State of California, which exempts from taxation all property which may belong to the United States.

7. That to the extent that said report omits the deduction of said Federal Estate Tax amounting to $128,730.08, and imposes inheritance taxes thereon amounting to the sum of $26,205.75, the same constitutes and is a violation of the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States because it, in effect, deprives said estate and the residuary legatees and devisees under said Will of their property to the amount of said sum of $26,205.75 without due process of law.

[fol. 48] 8. That the Act of the Legislature of the State of California, approved May 23, 1917, and known as the "Inheritance Tax Act" is, so far as it directs, that no deduction shall be made of any estate tax paid to the Government of the United States, in determining the market value of estates subject to inheritance tax, unconstitutional and void, because it contravenes and violates the provisions of Subdivision 30 of Section 25 of Article IV of the Constitution of the State of California, which forbids special legislation changing the law of descent and succession, and because also it contravenes and violates the provisions of Section 1 of Article XIII thereof, which forbids double taxation and provide- that all property shall be taxed in proportion to its value, and that such property as may belong to the United States shall be exempt from taxation.

Wherefore said executrix and executor pray that said report be not confirmed as written, but that the same be amended so as to deduct from the net valuation thereby shown the sum of $185,189.61, and the taxes payable out of said estate, ascertained and fixed accordingly; [fol. 49] and that such other or further order be made in this regard as may be just and proper.

Edward C. Harrison, Maurice E. Harrison, Attorneys for Executrix and Executor of the Will of Henrietta Pierce Watkinson, Deceased.

That on the 25th day of April, A. D. 1921, the said report of said inheritance tax appraiser, and the said objections thereto, so filed as aforesaid by said executrix and executor, came regularly on for hearing in and by the said Superior Court, pursuant to continuances duly and regularly ordered and had from the 4th day of April, A. D. 1921, originally appointed as the day for the hearing thereof; Edward C. Harrison, Esq., appearing as attorney for the said executrix and executor, and A. W. Brouillet, Esq., appearing on behalf of the State Controller of the State of California, and the County Treasurer of the City and County of San Francisco, and being heard in response to said objections;

That upon such hearing due proof was made to the satisfaction of the Court; that notice of such hearing had been given in all respects as required by law and the order of the Court in that regard;

That upon such hearing it was duly proved on behalf of said [fol. 50] executrix and executor and in support of their objections to said report, that the said executrix and executor had been required and compelled by the Collector of Internal Revenue for the United States Treasury Department, to pay from and out of said estate to the United States as and for the Federal Estate Tax thereon, under and pursuant to the provisions of the Act of Congress known as "The Revenue Act of 1918," the sum of $128,730.08, and that neither the whole nor any part of said sum of $128,730.08 so paid as Federal Estate Tax, is or was deducted by said appraiser in arriving at the net value of said estate, subject to inheritance tax as stated in and shown by his aforesaid report; and that said sum of $128,730.08 constituted and was and is the true and correct amount of the Federal Estate Tax payable upon said estate, correctly computed under and pursuant to the provisions of the aforesaid Act of Congress.

And that after a full hearing had upon said report and said objections thereto, said Superior Court made, on the said 25th day of April, A. D. 1921, its order modifying said report in respect to certain figures therein contained, but overruling and disallowing said objections so far as the same related to the claim made by and on [fol. 51] behalf of said executrix and executor to have said amount of said Federal Estate Tax deducted from the value of said estate in arriving at the net value thereof for purpose of computation of inheritance tax.

And that the following is a copy of said order so made as aforesaid, on said 25th day of April, A. D. 1921.

[fols. 52-57] ORDER MODIFYING AND CONFIRMING REPORT OF INHERITANCE TAX APPRAISER

Omitted; printed side page 2 ante.

[fol. 58] [File endorsement omitted.]

IN SUPERIOR COURT OF SAN FRANCISCO COUNTY

ORDER SETTLING BILL OF EXCEPTIONS—Filed May 5, 1921

That the said executrix and executor then and there duly excepted to said order so made as aforesaid; and to preserve such exception and properly authenticate the same as matter of record herein, this bill stating the same is hereby settled, allowed and certified on this [fol. 59] 5th day of May, A. D. 1921, by the undersigned.

Frank H. Dunne, Judge of the Superior Court.

Correct: May 4, 1921. A. W. Brouillet, Asst. Inheritance Tax Attorney.

[File endorsement omitted.]

[fol. 60] IN SUPERIOR COURT OF SAN FRANCISCO COUNTY

NOTICE OF APPEAL—Filed June 14, 1921

Notice is hereby given that Lucy Ward Stebbins and Frank J. Hurley, the Executrix and Executor of the will of Henrietta Pierce Watkinson, deceased, hereby appeal to the Supreme Court of the State of California, from all that portion of the order made by the above named Superior Court on the 25th day of April, A. D. 1921, and filed herein on the 29th day of April, A. D. 1921, and recorded and entered on the 5th day of May, A. D. 1921, in Book No. 522 of the Minutes of said Superior Court in Probate at page 376, modifying and confirming the report of the Inheritance Tax Appraiser theretofore filed herein—which portion thereof so hereby appealed from, disallows and overrules certain of the objections duly filed herein by said Executrix and Executor to said report, and refuses to amend said report by the deduction from the net valuation of the estate of said deceased, for the purpose of the computation of the inheritance tax thereon, as made and shown in and by said report, of the sum of $128,730.08 paid by said Executrix and Executor from said estate, as and for a Federal Estate Tax thereon, and by the proper con- [fol. 61] sequent reduction of the said inheritance tax as computed in and by said report.

June 14, A. D. 1921.

Edward C. Harrison, Maurice E. Harrison, Attorneys for Appellants.

Receipt of a copy of the foregoing notice of appeal is hereby admitted this 14th day of June, A. D. 1921.

A. W. Brouillet, Attorney for the State Controller, the County Treasurer, and the Inheritance Tax Appraiser.

[File endorsement omitted.]

[fol. 62] In Superior Court of San Francisco County

Stipulation re Transcript of Record

It is hereby stipulated that the foregoing transcript on appeal is correct; that it contains full, true and correct copies of all the papers therein set forth now on file in the office of the County Clerk of the City and County of San Francisco, State of California; that the minute orders therein contained are full, true and correct copies thereof as made and entered in the minutes of the Superior Court; that the said foregoing papers shall constitute the transcript on appeal in this cause and that the appeal may be heard and determined thereon.

Dated July 29th, 1921.

A. W. Brouillet, Assistant Inheritance Tax Attorney and Attorney for State Controller, Respondent. Edward C. Harrison, Maurice E. Harrison, Attorneys for Appellants.

[fol. 63] In Superior Court of San Francisco County

Clerk's Certificate

I, H. I. Mulcrevy, County Clerk of the City and County of San Francisco, State of California and ex-officio Clerk of the Superior Court in and for said City and County, hereby certify that I have compared the foregoing transcript with the original papers in said action, now on file in my office, and with the orders therein made and entered on the minutes of said Court, and that the papers and orders therein contained are full, true and correct copies of the originals on file in this office, and of the whole thereof.

I further certify that the erasures and interlineations appearing in the foregoing transcript were made before certifying thereto.

In witness whereof I have hereunto set my hand and affixed the seal of said Superior Court this — day of ——, 1921.

H. I. Mulcrevy, Clerk, by —— ——, Deputy Clerk. (Seal.)

[fol. 64] IN THE SUPREME COURT OF CALIFORNIA

San Francisco. No. 9937. In Bank

In the Matter of the Estate of HENRIETTA PIERCE WATKINSON, Deceased

LUCY WARD STEBBINS and FRANK J. HURLEY, as Executrix and Executor, Appellants,

vs.

RAY L. RILEY, Controller of the State of California, Respondent

PETITION FOR AND ORDER ALLOWING WRIT OF ERROR—Filed November 9, 1923

To the Honorable Curtis D. Wilbur, Chief Justice of the Supreme Court of the State of California, and the Honorable Associate Justices of said Supreme Court:

Lucy Ward Stebbins and Frank J. Hurley, as Executrix and Executor of the Will of Henrietta Pierce Watkinson, Deceased, Appellants, in the above-entitled cause, feeling themselves aggrieved by the action of the said Supreme Court of the State of California, and of the judgment of the said Supreme Court rendered on the 15th day of August, 1923, affirming the order of the Superior Court of the City and County of San Francisco confirming the report of the Inheritance Tax Appraiser with relation to the State Inheritance Tax to be fixed and paid in the matter of the Estate of Henrietta Pierce Watkinson, Deceased, petitions the said Supreme Court of the State of California for an order allowing the said appellants to prosecute a writ of error to the Supreme Court of the United States, under and according to the laws of the United States, on that behalf made and provided, and particularly under Section 237 of the Judicial Code, as amended, September 6, 1916 (39 Stat. 726) and that a transcript of the record and proceedings and all papers upon which the judgment and rulings herein were rendered, duly authen-[fol. 65] ticated as by law provided, may be sent to the Supreme Court of the United States, and also that an order may be made fixing the amount of cost bond which the appellants shall give and furnish upon said writ of error, and upon the giving of said security all further proceedings of this court be suspended and stayed until the determination of said writ of error.

Dated: San Francisco, California, November 9th, 1923.

Lucy Ward Stebbins and Frank J. Hurley, Executrix and Executor of the Will of Henrietta Pierce Watkinson, Deceased, by Edward C. Harrison, Maurice E. Harrison, Carey Van Fleet, Sidney M. Ehrman, Wm. M. Madden, Joseph G. De Forest, Counsel for Appellants, Plaintiffs in Error.

Upon consideration of the above petition for writ of error returnable in the Supreme Court of the United States it is ordered that the said writ of error be, and hereby is allowed as prayed for, upon the giving of a cost bond in the sum of Two Hundred and Fifty Dollars ($250.00).

Dated: San Francisco, California, November 9, 1923.

Curtis D. Wilbur, Chief Justice of the Supreme Court of the State of California.

[fol. 66] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed November 9, 1923

Now comes Lucy Ward Stebbins and Frank J. Hurley, as Executrix and Executor of the Will of Henrietta Pierce Watkinson, Deceased, the appellants in the above-entitled action, being the plaintiffs in error herein, and in connection with their petition for a Writ of Error, make the following assignment of errors, which they aver occurred in the proceedings, decision and judgment of the said Supreme Court of the State of California in the above-entitled cause, to-wit:

First. The Court erred in adjudging and deciding that the provisions of the "Inheritance Tax Act" of the State of California, as amended in 1917, statutes of California 1917, page 880, chapter 589, in respect to Subdivision 10 of Section 2 thereof, are not in conflict with and in violation of the provisions of the 14th amendment of the constitution of the United States for that the State of California by and through the provisions of said statute assumes and seeks to deprive and does deprive plaintiff in error and certain citizens and persons within the jurisdiction of the State of California of [fol. 67] property without due process of law. That said Subdivision 10 of Section 2 of said statute provides as follows:

"In determining the market value of the property transferred, no deduction shall be made for any inheritance tax or estate tax paid to the Government of the United States."

Second. That the Court erred in adjudging and deciding that the provisions of the "Inheritance Tax Act" of the State of California, as amended in 1917, statutes of California 1917, page 880, chapter 589, in respect to Subdivision 10 of Section 2 thereof, are not in conflict with and in violation of the provisions of the 14th amendment of the constitution of the United States for that the State of California by and through the provisions of said statute assumes and seeks to deny and does deny to plaintiff in error herein and certain

citizens and persons within the jurisdiction of the State of California the equal protection of the law.

Third. The Court erred in holding that by the provisions of said statute that plaintiff in error is not deprived of property without due process of law.

Fourth. The Court erred in holding that by the provisions of said statutes plaintiff in error is not denied the equal protection of the law.

Fifth. That the Court erred in adjudging and deciding that the provisions of the "Inheritance Tax Act" of the State of California, as amended in 1917, Statute of California 1917, page 880, chapter 589, in respect to Subdivision 10 of Section 2 thereof, are not in conflict with and in violation of the provisions of the 14th amendment of the constitution of the United States, and erred in ignoring the rule laid down in the case of Knowlton vs. Moore, 178 U. S. page 41, which rule applies particularly to the case at bar and which [fol. 68] is to the effect that an arbitrary provision fixing the rate of a succession tax with reference to the sum of the property of another brings about such a profound inequality that it would transcend the limitations arising from the fundamental conceptions of a free Government which underlie all constitutional systems.

Sixth. That the Court erred in adjudging and deciding that said "Inheritance Tax Act" and particularly Subdivision 10 of Section 2 thereof does not contravene the 14th amendment of the constitution of the United States in view of the fact that the 'Inheritance Tax Act" of the State of California has been decided to be a succession tax, that is to say, a tax upon what the transferee receives (Estate of Henry Miller, 184 Cal. 674), and the Federal tax being an estate tax, that is to say, a tax upon what the decedent leaves, there is no escape from the conclusion that the Federal estate tax must be deducted in order to determine the amount upon which the succession tax should be levied.

Seventh. That the Court erred in adjudging and deciding that said "Inheritance Tax Act" of the State of California is valid for the reason that by the terms of said Act it provides for a tax upon property belonging to the United States Government and provides for a lien thereon. Section 3 of said "Inheritance Tax Act" providing as follows:

"Sec. 3. Such taxes shall be and remain a lien upon the property passed or transferred until paid; provided, that said lien shall be limited to the property chargeable therewith, and the person to whom the property passes or is transferred and all administrators, executors and trustees of every estate so transferred or passed, shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed."

Eighth. That the Court erred in adjudging and deciding that said provisions of the "Inheritance Tax Act" are not repugnant to clause 1 of Section 8 of Article 1 of the Constitution of the United States in that they interfere with the power of Congress to levy and collect [fol. 69] taxes, duties, imports and excises to pay the debts and provide for the common defense and general welfare of the United States.

Ninth. That the Court erred in ordering judgment for the defendant in error herein.

Wherefore, the said appellants pray that the said decision and judgment of the said Supreme Court of the State of California be reversed and that such other or further order be made in this regard as may be just and proper in the premises.

Dated at San Francisco, California, this 9th day of November, 1923.

Lucy Ward Stebbins and Frank J. Hurley, as Executrix and Executor of the Will of Henrietta Pierce Watkinson, Deceased, by Edward C. Harrison, Maurice E. Harrison, Carey Van Fleet, Sidney M. Ehrman, Joseph D. De Forest, Counsel for Appellants, Plaintiffs in Error.

[fol. 70] IN SUPREME COURT OF CALIFORNIA

BOND ON WRIT OF ERROR FOR $250.00—Approved and Filed November 9, 1923; omitted in printing

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[fol. 71] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed November 9, 1923

To the Clerk of the said Court:

SIR: Please make and furnish a certified Transcript of Record including the proceedings had in the said Supreme Court of the State of California, for use upon return to Writ of Error returnable in the Supreme Court of the United States in the above-entitled cause, the said Transcript of Record to consist of a copy of the following:

1. Printed Transcript of Record on which the cause was heard in the said Supreme Court of the State of California, to which add a typewritten, or printed copy of the following entitled proceedings that were had, and of papers filed in said Supreme Court of the State of California, viz:

2. Order of submission, entered.

3. Opinion of Supreme Court dated May 24, 1923.

4. Ord granting re-hearing.

5. Opinion of Supreme Court dated August 15, 1923.

6. Judgment (Remittitur).

7. The following papers on Writ of Error returnable in the Supreme Court of the United States:

(a) Petition for and Order Allowing Writ of Error and Fixing [fol. 72] Amount of Bond;

(b) Assignment of Errors;

(c) Bond on Writ of Error;

(d) Præcipe for Transcript of Record;

(e) Certificate of Clerk of the Supreme Court of the State of California to said Transcript of Record;

(f) Original Writ of Error, with Return thereon; and

(g) Original Citation on Writ of Error.

Edward C. Harrison, Maurice E. Harrison, Carey Van Fleet, Sidney M. Ehrman, Joseph G. De Forest, Attorneys for Appellants, Plaintiffs in Error.

Service of a copy of the within præcipe is hereby admitted this 9th day of November, 1923.

Ray L. Riley, By Z. I. Lucas, Counsel for Respondent, Defendant in Error

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[fol. 73] UNITED STATES OF AMERICA, ss:

IN SUPREME COURT OF CALIFORNIA

WRIT OF ERROR—Filed November 9, 1923

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of California, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of California, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between Lucy Ward Stebbins and Frank J. Hurley, as Executrix and Executor of the Will of Henrietta Pierce Watkinson, Deceased, appellants, vs. Ray L. Riley, Controller of the State of California, respondent, wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground

of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity, or wherein was drawn in question the construction of a clause of the Constitution, a manifest error has happened to the great damage of the said Lucy Ward Stebbins and Frank J. Hurley, as Executrix and Executor of said Will, and of persons interested in said estate, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the City of Washington, in the District of Columbia, within sixty days from the date hereof, in the said Supreme Court of the United States, to be then and there held, that, [fol. 74] the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William H. Taft, Chief Justice of the United States, the 9th day of November, in the year of our Lord One Thousand Nine Hundred and Twenty-three.

F. D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, by Paul P. O'Brien, Deputy Clerk. (Seal of the United States Circuit Court of Appeals, Ninth Circuit.)

Allowed by Curtis D. Wilbur, Chief Justice of the Supreme Court of the State of California.

[fol. 75] IN SUPREME COURT OF CALIFORNIA

CITATION—In usual form, showing service on Ray L. Riley; filed November 9, 1923; omitted in printing

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[fol. 76] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

CLERK'S CERTIFICATES RE SUBMISSION

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that by a minute order of this court dated July 27, 1922, the above entitled cause was submitted on the briefs on file, as shown by the records of my office.

Witness my hand and the seal of the Court this 15th day of November, A. D., 1923.

B. Grant Taylor, Clerk, by I. Erb, Deputy Clerk. (Seal of Supreme Court of California.)

[fol. 77] [Title omitted]

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that by a minute order of this court, dated January 9, 1923, the submission of the above cause was vacated, and the cause resubmitted on the briefs on file, as shown by the records of my office.

Witness my hand and the seal of the Court this 15th day of November, A. D. 1923.

B. Grant Taylor, Clerk, by I. Erb, Deputy Clerk. (Seal of Supreme Court of California.)

[fol. 78] [Title omitted]

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that by a minute order of this court, dated January 23, 1923, the above cause was ordered submitted, as shown by the records of my office.

Witness my hand and the seal of the Court this 15th day of November, A. D. 1923.

B. Grant Taylor, Clerk, by I. Erb, Deputy Clerk. (Seal of Supreme Court of California.)

[fol. 79] [File endorsement omitted]

IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

ORDER FOR HEARING EN BANC—Filed June 21, 1923

Upon petition for rehearing the judgment of the court heretofore entered herein is hereby vacated and set aside and the same ordered to a hearing before the court in Bank and placed on July Calendar July 2nd.

Dated, June 21, 1923.

Lawlor, Acting C. J.; Lennon J., Waste J., Myers J.

Seawell J. Dissents.

[fol. 80] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

CLERK'S CERTIFICATE RE SUBMISSION

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that by a minute order of this court

dated July 3, 1923, the above entitled cause was argued and ordered submitted, as shown by the records of my office.

Witness my hand and the seal of the Court this 15th day of November, A. D. 1923.

B. Grant Taylor, Clerk, by I. Erb, Deputy Clerk. (Seal of Supreme Court of California.)

[fol. 81] [File endorsement omitted]

OPINION—Filed May 24, 1923

This appeal is from an order of the superior court confirming the report of the inheritance tax appraiser with relation to the state inheritance tax to be fixed and paid from said estate. Under the provisions of the United States revenue act of 1918 the executors of the estate were required to pay, and did pay, to the federal government, as and for the federal inheritance tax upon said estate, the sum of $128,730.08. The state inheritance tax appraiser in thereafter making his appraisement and report upon said estate refused and failed to deduct any part of this payment in arriving at the value of the estate subject to the state inheritance tax. The report thereon, as to the state tax due, was consequently $26,205.75 greater in amount than such tax would have aggregated had such deduction been made. The court, over the objection of the executors, confirmed said report as to this particular portion thereof and from its order so made and entered this appeal has been taken.

The statutory authority upon which the inheritance tax appraiser relied in making his report to the effect above stated is to be found in subdivision 10 of section 2 of the Inheritance Tax Act of 1917 (Stats. 1917, p. 883), which provides as follows: "In determining the market value of the property transferred, no deduction shall be made for any inheritance tax or estate tax paid to the government of the United States." With respect to the interpretation to be placed upon this apparently plain and simple direction of the statute touching the subject with which it deals, the appellant herein, and also the various amici curiæ, who have presented briefs and arguments herein, make two main contentions. First, that the foregoing provisions of the statute, when read in the light of legislative intent and purpose in the enactment of the Inheritance Tax Act of 1917, read as a whole, is not to be given the meaning and effect which its language apparently imports. Second, that if it is to be given such meaning and intent, it is for various reasons unconstitutional and void. As lending support to the first of these contentions, both the appellant and several amici curiæ strongly rely upon certain language used by this court in the matter of the Estate of Kennedy, 157 Cal. 517, in dealing with deductions to be made prior to the inheritance tax appraisement under the provisions of the Inheritance Tax Act [fol. 82] in force at the time of death of the decedent, the language of this court thus relied on reading as follows:

"The provisions of our tax act clearly show that the tax imposed thereby is one solely upon the devisee, legatee, or heir, and one upon him only as to such property as he actually takes on distribution as devisee, legatee, or heir. It would appear to be a most absurd and inequitable provision that imposed a tax on one for the privilege of succeeding as heir, devisee, or legatee to certain property of the decedent, where the very property to which he is so held to succeed is lawfully diverted by the probate court to other purposes and never can be distributed to him."

The foregoing language of this court was repeated and approved in Estate of Miller, 61 Cal. Dec. 90. It is to be noted, however, that the expression of this court as above set forth was used with reference to the terms and interpretation of the inheritance tax laws of this state as they stood prior to the changes therein worked by the passage of the Inheritance Tax Act of 1917, and particularly of the provision of this later act first hereinabove set forth, and which appears upon its face to have been intended to change the policy of the state with respect to the deduction to be made on account of the federal inheritance taxes imposed or paid prior to the action of the state inheritance tax appraiser and of the court thereon.

In determining the scope and effect of the inheritance tax laws of this state as finally embodied in the Inheritance Tax Act of 1917, the most recent utterances of this court in interpreting and applying the same are, we think, conclusive upon the first branch of this discussion. In the Matter of the Estate of Charlotte Bowditch, 64 Cal. Dec. 152, this court, in defining the theory upon which the state proceeded in the imposition of inheritance taxes, said:

"Of prime importance in all cases concerning the determination of the jurisdiction to impose an inheritance tax is the fundamental proposition that a tax of that character is a tax upon the right or privilege of succeeding to property. 'The so-called right of inheritance and also the right of testamentary disposition are not inherent rights of the individual, nor are they safeguarded or secured in futuro by any provision of our constitution. They are both subject to legislative control and are creatures of legislative will. Consequently the legislature has the power to take away both rights and to make the state the successor to all property upon the death of the owner. The right and power to impose a succession tax rests on this principle.' (Estate of Potter, 63 Cal. Dec. 141.) In other words, the tax is imposed and is sustainable upon the theory that a state which confers the privilege of succeeding to property may attach thereto the condition that a portion of the property shall be contributed to that state. (In re Wilmerding, 117 Cal. 281, 284.)"

This declared theory and policy of the state of California with respect to this form of taxation removes from this case the necessity for much of the discussion of the questions involved herein, arising out of the conflicting views of the courts of other jurisdictions, due in part to the fact that in certain of these states there exists no express

statutory direction that no deduction shall be made on account of the [fol. 83] prior imposition of the federal tax, and due also in some measure to differences in the form and scope of the various statutes under review in these decisions. A very fair and full review and analysis of the laws of several of the leading states and of the most important state and federal cases construing their provisions upon this subject is to be found in the recent case of In re Fisk's Estate, 189 N. W. (Mich.) 177. (1) If, as this court holds in the Estate of Bowditch, supra, "a state which confers the privilege of succeeding to property may attach thereto the condition that a portion of the property shall be contributed to that state," it follows necessarily that the state has full power to declare by statute what burdens or incumbrances, which by law or by the act of the decedent had become affixed to the interest of any particular heir, devisee or legatee, shall or shall not be excluded from the computations of the inheritance tax appraiser in reporting the amount of the inheritance tax to be imposed by the state thereon; and it also follows necessarily from the views above expressed by this court in Estate of Bowditch, supra, and from the last above deduction, that the amendment to the prior inheritance tax measures effected by the statute of 1917, and requiring that no deduction should be made on account of the federal inheritance taxes in determining the market value of the property to be charged with the state inheritance tax, is not inconsistent with the other or formerly existing provisions of said statute nor in anywise doubtful as to the interpretation to be given to its plain and simple terms. We find no merit, therefore, in the first contention urged by the appellant and by amici curiæ herein.

The second contention urged by appellant and his associates in the discussion of this appeal is that the provision of the act of 1917 first above quoted herein, if given this interpretation, is for various reasons unconstitutional and void. These reasons, briefly summarized, are that said provision is in violation of section 1 of the fourteenth amendment of the federal Constitution, providing that no state shall deprive any person of life, liberty or property without due process of law; and is also violative of section 1 of article XIII of the Constitution of California, providing that all property shall be taxed in proportion to its value; and of section 11 of article I of the same Constitution, providing that all laws of a general nature shall have a uniform operation; and of subdivision 30 of section 25 of article IV of the said Constitution, providing that the legislature shall not pass local or special laws changing the law of descent or succession; and of section 14 of article I of said Constitution, providing that property shall not be taken for public use without just compensation; and finally that said provision is void as an attempt to tax property of the United States exempt from state taxation under section 1 of article XIII of the state Constitution. (2) The fundamental answer to the most of these constitutional objections is to be found in the proposition above set forth, that an inheritance tax is not a property tax, but is essentially a tax upon the statutory privilege of testamentary transfer or succession, and that the state in extending the

privilege may place such limitations upon it as it deems proper in the way of burdens upon its exercise. This court said as much in the Matter of the Estate of Wilmerding, 117 Cal. 281, 284, in the following words:

"The right of inheritance, including the designation of heirs and the proportions which the several heirs shall receive, as well as the right of testamentary disposition, are entirely matters of statutory enactment, and within the control of the legislature. As it is only [fol. 84] by virtue of the statute that the heir is entitled to receive any of his ancestor's estate, or that the ancestor can divert his estate from the heir, the same authority which confers this privilege may attach to it the condition that a portion of the estate so received shall be contributed to the state, and the portion thus to be contributed is peculiarly within the legislative discretion."

(3) In this view of the provision of the statute under consideration it cannot be held violative of the terms of the federal Constitution, since the devisee or legatee of an estate affected by this provision does not become entitled to his portion of the property of the said estate until it has already been burdened with its inheritance tax, and hence by no part of said scheme of taxation can be held to have been deprived of property without due process of law. (U. S. v. Perkins, 163 U. S. 625; Estate of Sherman, 216 N. Y. 168; Booth v. Commonwealth, 130 Ky. 88; Maxwell v. Edwards, 99 Atl. (N. J.) 138; Bankers Trust Co. v. State, 114 Atl. (Conn.) 104.) As to the several sections of the state Constitution referred to in the foregoing objections, it must be held that since these taxes upon the privilege of testamentary transmission and succession, since they are not property taxes, cannot be held subject to the limitations placed by the Constitution upon property taxation. In 26 R. C. L., page 167, this proposition is quite clearly set forth as follows:

"An inheritance tax in any of its customary forms is not a tax on the property of the decedent with respect to which it is levied, but is an excise imposed on the privilege of transmitting or receiving property upon the death of the owner, and consequently is not subject to any of the constitutional limitations upon taxes on property found in the state constitution." (Citing cases.)

(4) As to the appellants' final contention that the provision of the statute under review constitutes an attempt to subject United States property to taxation and is therefore violative of section 1 of article XIII of the state Constitution exempting such property from state taxation, we find it to be without merit. The provision in question does not attempt to lay any burden upon that portion of the estate of the decedent which the federal government has already appropriated in the form of its inheritance tax, nor does it in any degree lessen said amount, its increase of the burden being laid solely upon those whose interest in the estate has already been charged with such federal tax, by forbidding any deduction

on account of such tax. The appellants cite no authorities in support of said contention and we are satisfied none exist.

The order is affirmed.

[fol. 85] IN SUPREME COURT OF CALIFORNIA

OPINION ON REHEARING—Filed August 15, 1923

[Title omitted]

By the Court:

A rehearing was granted in this matter in order that the appellants and the several amici curiae might give the court the benefit of oral argument upon the points urged in their respective petitions for rehearing. Upon such argument and submission of the cause the court adheres to its former conclusions as expressed in the opinion of Mr. Justice Richards pro tem., which opinion, with the insertion of certain more recently cited authorities, reads as follows:

"This appeal is from an order of the superior court confirming the report of the inheritance tax appraiser with relation to the state inheritance tax to be fixed and paid from said estate. Under the provisions of the United States revenue act of 1918, the executors of the estate were required to pay, and did pay, to the federal government, as and for the federal inheritance tax upon said estate, the sum of $128,730.08. The state inheritance tax appraiser in thereafter making his appraisement and report upon said estate refused and failed to deduct any part of this payment in arriving at the value of the estate subject to the state inheritance tax. The report thereon, as to the state tax due, was consequently $26,205.75 greater in amount than such tax would have aggregated had such deduction been made. The court, over the objection of the executors, confirmed said report as to this particular portion thereof and from its order so made and entered this appeal has been taken.

The statutory authority upon which the inheritance tax appraiser relied in making his report to the effect above stated is to be found in subdivision 10 of section 2 of the inheritance tax act of 1917 (Stats. 1917, p. 883), which provides as follows: 'In determining the market value of the property transferred, no deduction shall be made for any inheritance tax or estate tax paid to the government of the United States.' With respect to the interpretation to be placed upon this apparently plain and simple direction of the statute touching the [fol. 86] subject with which it deals, the appellant herein, and also the various amici curiae who have presented briefs and arguments herein, make two main contentions. First, that the foregoing provision of the statute, when read in the light of legislative intent and purpose in the enactment of the inheritance tax act of 1917, read as a whole, is not to be given the meaning and effect which its language apparently imports. Second, that if it is to be given such

meaning and intent, it is for various reasons unconstitutional and void. As lending support to the first of these contentions, both the appellant and several amici curiae strongly rely upon certain language used by this court in the matter of the Estate of Kennedy, 157 Cal. 517, in dealing with deductions to be made prior to the inheritance tax appraisement under the provisions of the inheritance tax act in force at the time of the death of the decedent, the language of this court thus relied on reading as follows:

"The provisions of our tax act clearly show that the tax imposed thereby is one solely upon the devisee, legatee, or heir, and one upon him only as to such property as he actually takes on distribution as devisee, legatee, or heir. It would appear to be a most absurd and inequitable provision that imposed a tax on one for the privilege of succeeding as heir, devisee, or legatee to certain property of the decedent, where the very property to which he is so held to succeed is lawfully diverted by the probate court to other purposes and never can be distributed to him."

The foregoing language of this court was repeated and approved in Estate of Miller, 61 Cal. Dec. 90. It is to be noted, however, that the expression of this court as above set forth was used with reference to the terms and interpretation of the inheritance tax laws of this state as they stood prior to the changes therein worked by the passage of the inheritance tax act of 1917, and particularly of the provision of this later act first hereinabove set forth, and which appears upon its fact to have been intended to change the policy of the state with respect to the deduction to be made on account of the federal inheritance taxes imposed or paid prior to the action of the state inheritance tax appraiser and of the court thereon.

In determining the scope and effect of the inheritance tax laws of this state as finally embodied in the inheritance tax act of 1917, the most recent utterances of this court in interpreting and applying the same are, we think, conclusive upon the first branch of this discussion. In the Matter of the Estate of Charlotte Bowditch, 64 Cal. Dec. 152, this court, in defining the theory upon which the state proceeded in the imposition of inheritance taxes, said:

"Of prime importance in all cases concerning the determination of the jurisdiction to impose an inheritance tax is the fundamental proposition that a tax of that character is a tax upon the right or privilege of succeeding to property. 'The so-called right of inheritance and also the right of testamentary disposition are not inherent rights of the individual, nor are they safeguarded or secured in futuro by any provision of our constitution. They are both subject to legislative control and are creatures of legislative will. Consequently the legislature has the power to take away both rights and to make the state the successor to all property upon the death of the owner. The right and power to impose a succession tax rests on this principle.' (Estate of Potter, 63 Cal. Dec. 141) In other words, the tax is imposed and is sustainable upon the theory that [fol. 87] a state which confers the privilege of succeeding to property

may attach thereto the condition that a portion of the property shall be contributed to that state. (In re Wilmerding, 117 Cal. 281, 184.)"

This declared theory and policy of the state of California with respect to this form of taxation removes from this case the necessity for much of the discussion of the questions involved herein, arising out of the conflicting views of the courts of other jurisdictions, due in part to the fact that in certain of these states there exists no express statutory direction that no deduction shall be made on account of the prior imposition of the federal tax, and due also in some measure to differences in the form and scope of the various statutes under review in these decisions. A very fair and full review and analysis of the laws of several of the leading states and of the most important state and federal cases construing their provisions upon this subject is to be found in the recent case of In re Fisk's Estate, 189 N. W. (Mich.) 177. (1) If, as this court holds in the Estate of Bowditch, supra, 'a state which confers the privilege of succeeding to property may attach thereto the condition that a portion of the property shall be contributed to that state', it follows necessarily that the state has full power to declare by statute what burdens or incumbrances, which by law or by the act of the decedent had become affixed to the interest of any particular heir, devisee, or legatee, shall or shall not be excluded from the computations of the inheritance tax appraiser in reporting the amount of the inheritance tax to be imposed by the state thereon; and it also follows necessarily from the views above expressed by this court in Estate of Bowditch, supra, and from the last above deduction, that the amendment to the prior inheritance tax measures effected by the statute of 1917 and requiring that no deduction should be made on account of the federal inheritance taxes in determining the market value of the property to be charged with the state inheritance tax, is not inconsistent with the other or formerly existing provisions of said statute nor in anywise doubtful as to the interpretation to be given to its plain and simple terms. We find no merit, therefore, in the first contention urged by the appellant and by amici curiæ herein.

The second contention urged by appellant and his associates in the discussion of this appeal is that the provision of the act of 1917 first above quoted herein, if given this interpretition, is for various reasons unconstitutional and void. These reasons, briefly summarized, are that said provision is in violation of section 1 of the 14th amendment of the federal constitution, providing that no state shall deprive any person of life, liberty or property without due process of law; and is also violative of section 1 of article XIII of the constitution of California, providing that all property shall be taxed in proportion to its value; and of section 11 of article I of the same constitution, providing that all laws of a general nature shall have a uniform operation; and of subdivision 30 of section 25 of article IV of the said constitution providing that the legislature shall not pass local or special laws changing the law of descent or succession; and of section 14 of article I of said constitution providing that property

shall not be taken for public use without just compensation; and finally that said provision is void as an attempt to tax property of the United States exempt from state taxation under section 1 of article XIII of the state constitution.

[fol. 88] (2) The fundamental answer to the most of these constitutional objections is to be found in the proposition above set forth, that an inheritance tax is not a property tax, but is essentially a tax upon the statutory privilege of testamentary transfer or succession, and that the state in extending the privilege may place such limitations upon it as it deems proper in the way of burdens upon its exercise. This court said as much in the Matter of the Estate of Wilmerding, 117 Cal. 281, 284, in the following words:

'The right of inheritance, including the designation of heirs and the proportions which the several heirs shall receive, as well as the right of testamentary disposition, are entirely matters of statutory enactment, and within the control of the legislature. As it is only by virtue of the statute that the heir is entitled to receive any of his ancestor's estate, or that the ancestor can divert his estate from the heir, the same authority which confers this privilege may attach to it the condition that a portion of the estate so received shall be contributed to the state, and the portion thus to be contributed is peculiarly with the legislative discretion.'

(3) In this view of the provision of the statute under consideration it cannot be held violative of the terms of the federal constitution, since the devisee or legatee of the estate affectd by this provision does not become entitled to his portion of the property of the said estate until it has already been burdened with its inheritance tax and hence by no part of said scheme of taxation can he be held to have been deprived of property without due process of law. U. S. v. Perkins, 163 U. S. 625; Estate of Sherman, 216 N. Y. 168; Booth v. Commonwealth, 130 Ky. 88; Maxwell v. Edwards, 99 Atl. (N. J.) 138; Bankers Trust Co. v. State, 114 Atl. (Conn.) 104). As to the several sections of the state constitution referred to in the foregoing objections, it must be held that these taxes upon the privilege of testamentary transmission and succession, since they are not property taxes cannot be held subject to the limitations placed by the constitution upon property taxation. In 26 R. C. L., p. 167, this proposition is quite clearly set forth as follows:

'An inheritance tax in any of its customary forms is not a tax on the property of the decedent with respect to which it is levied, but is an excise imposed on the privilege of transmitting or receiving property upon the death of the owner, and consequently is not subject to any of the constitutional limitations upon taxes on property found in the state constitution.' (Citing cases.) See, also, In re Frick's Estate, 121 Atl. (Pa.) 35, 39; In re Sanford's Estate, 175 N. W. 506; In re Kirkpatrick's Estate, 275 Pa. 271; New York Trust Co. v. Eisner, 256 U. S. 348; Chanler v. Kelsey, 205 U. S. 479.

(4) As to the appellants' final contention that the provision of the statute under review constitutes an attempt to subject United States

property to taxation and is therefore violative of section 1 of Article XIII of the state constitution exempting such property from state taxation, we find it to be without merit. The provision in question does not attempt to lay any burden upon that portion of the estate of the decedent which the federal government has already appropriated in the form of its inheritance tax, nor does it in any degree lessen said amount, its increase of the burden being laid solely upon those whose interest in the estate has already been charged with such federal tax, by forbidding any deduction on account of such tax. [fol. 89] (U. S. v. Perkins, 163 U. S. 625.) The appellants cite no authorities in support of said contention and we are satisfied none exist."

(5) In their petitions and briefs upon rehearing and upon oral argument thereon, appellants and amici curiæ earnestly insisted that the act in question was discriminatory and therefore void, in that it required residuary legatees to pay a larger inheritance tax in proportion to the value of the estate to which they succeeded than was required of other legatees, even though they be all of the same degree of relationship to the testator. The answer to this contention is twofold, the first being that the act does have a uniform operation, since it applies alike to all residuary legatees, and the second being that any disparity between the net amounts received by different legatees by reason of the operation of the act must be deemed to be chargeable to the testator rather than to the law. The testator is deemed to know the law, and therefore, when in making his will he names one as a specific legatee and another as a residuary legatee, he must be deemed to have intended thereby that the latter should be charged with the amounts required to be paid for the federal tax.

The order is affirmed.

[fol. 90] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

JUDGMENT

The above-entitled matter having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It is Ordered, Adjudged and Decreed by the Court that the order of the Superior Court in and for the City and County of San Francisco in the above-entitled cause, be and the same is hereby affirmed, respondent to recover costs of appeal.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 15th day of August, 1913, and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office, this 18th day of September, A. D. 1913.

B. Grant Taylor, Clerk, by I. M. Johnson, Deputy. (Seal.)

[fol. 91] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

CLERK'S CERTIFICATE

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify the foregoing to be the record upon writ of error in the above-entitled matter, consisting of the following documents, to-wit:

Copy of transcript,
Original petition for writ of error,
Copy of order granting same,
Copy of assignment of errors,
Copy of bond,
Original præcipe,
Original writ of error,
Citation (original),
Copy of minute orders dated July 27, 1922, January 9, 1923, January 23, 1923, June 21, 1923, July 3, 1923,
Copy of opinion dated May 24, 1923,
Copy of opinion dated August 15, 1923.
Copy of Judgment,

all being full, true and correct, as shown by the records and files of my office.

Witness my hand and the seal of this court this 13th day of November A. D. 1923.

B. Grant Taylor, Clerk, by A. Erb, Deputy. (Seal of Supreme Court of California.)

Endorsed on cover: File No. 29,973. California Supreme Court. Term No. 227. Lucy Ward Stebbins and Frank J. Hurley, as executrix and executor of the will of Henrietta Pierce Watkinson, deceased, plaintiffs in error, vs. Ray L. Riley, Controller of the State of California. Filed November 26th, 1923. File No. 29,973.